(2) Ghose on **Mortgages,** Edn. 3, p. 332-3, in which authority is cited, for the rule that, if the mortgaged property is converted into money under circumstances which prevent the mortgagee from following such property, the security will attach to the purchase money. The author adds that as the security of the mortgagee is indivisible the charge would fasten upon the whole proceeds and not on any particular part.

Following the principles laid down from the above authorities, His Lordship allowed the appeal and held (at p. 84):

> A mortgagee is entitled to take as much security as he can get for his money, and when part of the land mortgaged is taken from him his security is diminished pro tanto. In the present case the security has been diminished to the extent of Rs. 410-6-0, and the mortgagee is, in my opinion, entitled to that amount in liquidation of the mortgage debt, the indivisibility of the mortgage attaching itself to the proceeds of the sale of part of the land mortgaged and the whole and each part of that land being security for the whole amount advanced.

It is interesting to note that the learned trial Judge refused to follow the ratio of *Topan Das* because, according to him, the case was decided on a s. 73(2) of the Indian Transfer of Property Act, which has no similar statutory provision in Sabah. Granting that the Indian Court was dealing with its own Transfer of Property Act, which has no equivalent in Sabah, yet, we entirely agree with Reid J. (at p. 82) that although the ruling was made under s. 73 of the Transfer of Property Act, "the principle laid down appears to be applicable to the present case." At this juncture, we would like to say that the submission of Encik Mohd. Annuar on *Topan Das* in the context of s. 3 of the Civil Law Act 1956 was quite misplaced.

Therefore, for reasons stated above, we allow this appeal with costs. Accordingly, we set aside the order of the apportionment and direct the whole of the compensation money be paid to the appellant toward part-payment of the debt due from the 4th respondent to the appellant under the charge. Deposit of the appeal is refunded to the appellant.

K.L. ENGINEERING SDN. BHD. & ANOR.

v.

ARAB MALAYSIA FINANCE BHD.

SUPREME COURT, KUALA LUMPUR
TAN SRI DATUK AMAR HAJI MOHD JEMURI BIN SERJAN CJ (BORNEO),
TAN SRI DATUK EDGAR JOSEPH JR. SCJ,
DATO' MOHAMED DZAIDDIN BIN HJ. ABDULLAH SCJ
[CIVIL APPEAL NO. 04-8-1990]
9 MARCH 1994

COMPANY LAW: Claim based on hire-purchase agreement - Whether signatories to the agreement had authority to sign on behalf of company - Whether agreement binding on company - Doctrine of constructive notice - Form 49 of Companies Act 1965 - Whether a public document - Whether rule in Turquand's case applicable.

The respondent, a licensed finance company, sued the first appellant under a hire-purchase agreement purported to have been signed by the second appellant and one Kow Yuen Wah. The lower Court entered judgment for the respondent and the appellants appeal to the High Court was dismissed.

On further appeal to the Supreme Court by the first appellant, Counsel for the second appellant having withdrawn the latter's appeal, the first appellant contended that the learned Judges in both Courts below failed to consider that the first appellant, being a body corporate, could only act through authorised persons and that the hire-purchase agreement was executed by a person who had no authority to act and who was not a director at the material time.

The first appellant further contended that the learned Judge failed to consider the "concession" made by Counsel for the respondent that there was insufficient evidence against the first appellant and ought, at the conclusion of the trial, to have dismissed the respondent's claim against it.

The question before the Supreme Court was whether Form 49, which is a return of particulars of directors, managers and secretaries and changes of particulars required to be lodged with the Registrar of Companies under s. 141(6) of the Companies Act 1965, was

a public document and if so whether the doctrine of constructive notice applied to Form 49.

Held:

[1] Form 49 is a public document which contains particulars of directors who are the mind and will of a company, as well as managers and secretaries who are responsible for the day-to-day running of the company. It is a document which affects the powers of the company and its agents. Persons dealing with the company should check with the Registrar of Companies who its directors, managers and secretaries are at any given time.

[2] As Form 49 is a public document to which the common law doctrine of constructive notice applies, the respondent, having been put upon inquiry of its contents, but having failed to check, must be presumed to have known that Kow Yuen Wah was not a director of the first appellant and was therefore not authorised to sign the hire purchase agreement on the company's behalf.

[3] Accordingly, as the hire purchase agreement was signed by an unauthorised person on behalf of the first appellant, the latter cannot be made liable under the hire purchase agreement.

[4] The concession by Counsel for the respondent in the Court below that there was insufficient evidence against the first appellant merely goes to show a weakness in the respondent's case. In practice, it is still the duty of the trial Judge to examine and evaluate the entire evidence before he can come to a conclusion that the evidence led against a defendant is so unsatisfactory or unreliable for him to hold that the plaintiff has not proved his case.

[First appellant's appeal allowed with costs. Second appellant's appeal struck out with costs].

[Bahasa Malaysia Translation of Headnote]

UNDANG-UNDANG SYARIKAT: Tuntutan berdasarkan kepada perjanjian sewa-beli - Sama ada penandatangan-penandatangan dalam perjanjian tersebut mempunyai kuasa untuk menandatangan bagi pihak syarikat - Sama ada perjanjian mengikat syarikat - Doktrin notis yang konstruktif - Borang 49 Akta Syarikat 1965 - Sama ada suatu dokumen umum - Sama ada kaedah dalam kes Turquand boleh dipakai.

Responden, sebuah syarikat kewangan yang berlesen, menyaman perayu pertama di bawah suatu perjanjian sewa-beli yang dikatakan ditandatangani oleh perayu kedua dan seorang bernama Kow Yuen Wah. Mahkamah Rendah telah mencatatkan penghakiman bagi responden dan rayuan oleh perayu-perayu kepada Mahkamah Tinggi telah ditolak.

Atas rayuan selanjutnya kepada Mahkamah Agung oleh perayu pertama, di mana Peguam perayu kedua telah menarik balik rayuan oleh perayu kedua, perayu pertama menghujahkan bahawa Hakim-Hakim dalam kedua-dua Mahkamah sebelum ini telah gagal untuk mempertimbangkan bahawa perayu pertama yang merupakan sebuah badan pertubuhan, hanya dapat bertindak melalui orang-orang yang diberikuasa sahaja dan bahawa perjanjian sewa-beli tersebut telah ditandatangani oleh seorang yang tidak mempunyai kuasa untuk bertindak dan yang tidak merupakan seorang pengarah pada waktu yang berkenaan.

Perayu pertama seterusnya menghujahkan bahawa Hakim berkenaan telah gagal untuk mempertimbangkan "pengakuan" yang dibuat oleh Peguam responden bahawa tidak terdapat bukti yang cukup terhadap responden pertama dan haruslah, pada ketika penyelesaian perbicaraan tersebut, menolak tuntutan responden terhadapnya.

Persoalan di hadapan Mahkamah Agung adalah sama ada Borang 49, yang merupakan penyata butir-butir mengenai para pengarah, pengurus dan setiausaha dan pertukaran butir-butir yang perlu diserahsimpan dengan Pendaftar Syarikat di bawah s. 141(6) Akta Syarikat 1965, adalah suatu dokumen umum dan jika begitu sama ada doktrin notis konstruktif terpakai kepada Borang 49.

Diputuskan:

[1] Borang 49 ialah sebuah dokumen umum yang mengandungi butir-butir mengenai para pengarah yang merupakan pemikir dan pembentuk syarikat, dan juga para pengurus dan setiausaha yang bertanggungjawab untuk pengurusan harian syarikat. Ianya ialah sebuah dokumen yang melibatkan kuasa syarikat dan agen-agenya. Sesiapa yang berurusan dengan syarikat haruslah memeriksa dengan Pendaftar Syarikat mengenai siapakah pengarah, pengurus dan setiausaha syarikat pada sebarang masa.

[2] Memandangkan Borang 49 ialah sebuah dokumen umum kepada mana doktrin notis konstruktif common law terpakai, responden, yang telah bertanyakan mengenai kandungannya, tetapi gagal untuk memeriksanya, mestilah dianggap sebagai mengetahui bahawa Kow Yuen Wah bukanlah merupakan seorang pengarah perayu pertama dan oleh yang demikian beliau tidak diberikuasa untuk menandatangani perjanjian sewa-beli bagi pihak syarikat.

[3] Sehubungan dengan itu, oleh kerana perjanjian sewa-beli tersebut telah ditandatangani oleh seorang yang tidak diberikuasa bagi pihak perayu pertama, maka perayu pertama tidak boleh dipertanggungjawabkan di bawah perjanjian sewa-beli tersebut.

[4] Pengakuan oleh Peguam responden dalam Mahkamah di bawah bahawa tidak terdapat bukti yang cukup terhadap perayu pertama, hanya menunjukkan yang kes responden adalah lemah. Dari segi amalan, adalah menjadi kewajipan Hakim perbicaraan untuk memeriksa dan menilai keseluruhan bukti sebelum beliau mencapai kesimpulan bahawa bukti terhadap defendan adalah tidak memenuhi atau tidak boleh dipercayai oleh beliau untuk memutuskan yang plaintif tidak membuktikan kesnya.

[Rayuan perayu pertama dibenarkan dengan kos. Rayuan perayu kedua ditolak dengan kos].

Cases referred to:
Woodland Development Sdn. Bhd. v. Chartered Bank [1986] 1 MLJ 84 ***(refd)***
Dart Sum Timber (Pte) Ltd. v. The Bank of Canton Ltd. [1982] 2 MLJ 101 ***(refd)***
Royal British Bank v. Turquand [1856] 6 E & B 327, 119 ER 886 ***(cit)***
Morris v. Kanssen [1946] AC 459 @ 474 & 475 ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 141 (1), (6)(b), Forms 24, 49

Other sources referred to:
Charlesworth & Cain on Company Law, Geoffrey Morse, p. 433
Palmer's Company Law, Vol. 1, 24th Edn.,
Gower's Principles of Modern Company Law, 5th Edn., 1992, p. 170

For the 1st appellant - Choong Hor Kiow; M/s. Catherine Choong & Co.
For the 2nd appellant - Guy Varghese; M/s. Richard Ho & Co.
For the respondent - Jennifer Tay; M/s. S.K. Tay & Co.

JUDGMENT

Mohamed Dzaiddin bin Hj. Abdullah SCJ: This is an appeal by K.L. Engineering Sdn. Bhd. (the first appellant), a private limited company incorporated in Malaysia under the Companies Act 1965 (the Act), carrying on business at No. 47, Jalan SS 20/11, Petaling Jaya, from the decision of the High Court Kuala Lumpur given on 27 February 1990, dismissing an appeal against the decision of the Sessions Court Judge Kuala Lumpur dated 17 May 1989. The appeal was originally brought by the first and second appellant, but at the outset of the hearing of this appeal, Encik Guy Varghese, Counsel for the second appellant, withdrew the latter's appeal. Accordingly, we struck out the second appellant's appeal with costs.

The factual background to the action at the Kuala Lumpur Sessions Court was as follows. The respondent, a licensed finance company, sued the first appellant as hirer of one unit of Nikko Concrete Batching Plant (the equipment) under a hire-purchase agreement (P7) purported to have been signed by the second appellant and Kow Yuen Wah on 13 September 1986. Both the second appellant and Kow Yuen Wah had also on the same date executed a letter of guarantee (P13). When the first appellant defaulted in the payment of the monthly instalments and failed and/or neglected to return the equipment to the company upon notices of termination of hire being served on the three defendants, the respondent commenced action against them, praying for judgment in the sum of RM31,007.48 and for the return of the equipment.

The main defence of the three defendants in the Court below, including that of the first appellant, was on the lack of authority on the part of the second defendant, Kow Yuen Wah, to execute P7 on behalf of the first appellant. Paragraph 6 of the defence states:

> Further or alternatively, the 1st defendant contend that one of the persons purporting to sign for the 1st defendant is the 2nd defendant who was at all material times not a director of the 1st defendant. The 2nd defendant was at all material times not authorised to act for or on behalf of the 1st defendant in any matter.

At the trial, Miss Beh Soak Heang (PW1), the marketing assistant of the respondent company, testified that at the material time, she

was a clerk at the Petaling Jaya branch office in charge of hire purchase agreements. Her duty was to process the documents after loans were approved. On the material day, she received from the first appellant an application form dated 8 September 1986 (P1), together with the company's memorandum and articles of association (P2), Form 24 (P3) and Form 49 of the Companies Act (P4) for processing. When the first appellant's loan was approved on 13 September 1986, she called in the directors, whom she identified as the second appellant and his brother, James Kow Yuen Wah, to sign P7 as directors of the company. After verifying their identities, both persons signed P7 and P13 in her presence. Under cross-examination, she stated that the officer in charge of approving loans was Kenneth Wong (who was not called as a witness). She did not know whether Mr. Wong had checked the documents with the Registrar of Companies before handing them to her. However, she admitted that she did not check the authenticity of any of these documents.

Mr. Kow Sak Chow (DW1), the managing director of the first appellant, testified that Kow Yuen Wah was a director of the company until 1982. At this stage, another copy of Form 49 (D14) was produced and shown to DW1 who stated that this form was filed in the Registry of Companies by his secretary. According to him, in 1986, Kow Yuen Wah was not a director of the first appellant. He denied that the first appellant had entered into any hire purchase agreement with the respondent.

The second appellant testified to the effect that at the material time he was a director of the first appellant, but denied that the signatures on P7 and P13 were his. He also stated that he had not purchased any machinery on behalf of the first appellant from the respondent.

From the evidence, it is of particular importance to note that there were two Form 49 before the Court. Form 49 is a return of particulars of directors, managers and secretaries and changes of particulars required to be lodged with the Registrar of Companies under s. 141(6) of the Act. One was **P4** which was dated 27 September 1980 with the name Kow Yuen Wah as one of the directors, and the other was **D14** dated 24 March 1986, where under the column, 'Nature of change', it is stated that Kow Yuen Wah retired at the AGM held on 27 February 1982.

After hearing submissions of Counsel and in spite of the concession by the plaintiff's Counsel that "plaintiff has insufficient evidence against K.L. Engineering Sdn. Bhd.", the Sessions Court Judge found the case for the respondent. In her brief grounds of decision, Her Honour made reference to the main defence when she stated:

> In the statement of defence of the 1st and 3rd defendants they deny executing the hire purchase agreement and contend that the 2nd defendant was not at the material time a director of the 1st defendant and therefore was not authorised to act on behalf of the 1st defendant. The 1st defendant further contend that the common seal used on the agreement is a forgery.

However, she made no finding on this crucial issue raised by the appellants. Instead, she accepted the evidence of PW1 and concluded as follows:

> PW1 had said in her evidence that the 2nd and 3rd defendants executed the documents before her and there is no evidence to the contrary. The burden of proving that Ex. P13 is a forgery fell on the defendants.
>
> After considering the documentary and oral evidence I conclude that the defendants had failed to discharge this onus. I therefore gave judgment to the plaintiff.

Against the above judgment, the appellants appealed to the High Court. His Lordship found no reason to disagree with the finding of the lower Court that the first appellant did execute the hire purchase agreement, P7, and the second appellant executed the guarantee P13. However, the crucial issue of whether Kow Yuen Wah had acted with or without the authority of the first appellant was not considered by the learned Judge. Nor was the issue of "concession" made by Counsel for the respondent. Hence, the present appeal.

Before us, the appeal was argued mainly on two grounds. The first and important ground was that the learned Judges in both Courts below failed to consider that the first appellant, being a body corporate, could act only through authorised persons and that the hire purchase agreement P7 was executed by a person who had no authority to act and who was not a director of the first appellant at the material time. Secondly, the learned Sessions Court Judge failed to consider the "concession" made by Counsel for the respondent at the outset of the submissions of Counsel that there was insufficient evidence against the first appellant and ought to have dismissed the respondent's claim

against the company at the conclusion of the trial.

On the first ground, Cik Catherine Choong, Counsel for the first appellant, submitted that from the evidence, it was clear to the Court that James Kow Yuen Wah, the second-named defendant, who signed the hire purchase agreement, P7, on 13 September 1986 was not a director of the first appellant but only a shareholder at the material time. Counsel pointed out that PW1 merely relied on the "older" Form 49 (P4) which was about six years old from the material date showing that James Kow Yuen Wah was a director of the company. The first appellant should have conducted a search at the Registry of Companies to check the particulars of directors. Had it done so, it would have obtained a more recent return, D14, which would show that Kow Yuen Wah retired as a director on 27 February 1982. In this regard, Counsel submitted that the doctrine of constructive notice applied to Form 49 because it is a public document which is for public inspection by persons dealing with the company.

Counsel referred us to a passage in **Charlesworth & Cain on Company Law** by Geoffrey Morse under Chapter 20 "Protection of Outsiders" at p. 433, which states:

> A person dealing with a company, even if he does not have actual notice, has constructive notice of the contents of its public documents, such as the memorandum & articles, special resolutions, register of charges **and, presumably, list of directors** because they are open to public inspection at the Company's Registration Office ...
> (The emphasis is mine).

Counsel also relied on a passage in the judgment of Gunn Chit Tuan J. (as he then was) in *Woodland Development Sdn. Bhd. v. Chartered Bank* [1986] 1 MLJ 84, where at p. 88, His Lordship stated:

> I ought to pause here to consider briefly the law relating to the doctrine of constructive notice in relation to delegated authority. That doctrine was that since the memorandum and articles of a company are public documents and open to public inspection, any one who had dealings with the company must be taken to have notice of the contents of those documents whether he had read them or not.

Another case referred to was *Dart Sum Timber (Pte) Ltd v. The Bank of Canton Ltd.* [1982] 2 MLJ 101, a Singapore Court of Appeal case on ostensible authority of a managing director. The trial Judge found Wong Kee Loh was the managing director of Dart Sum and therefore had the authority, express or implied, to execute the guarantee. The Court of Appeal, in allowing the appeal of the company after considering the evidence, found that Wong was the chairman and not the managing director. It held that Dart Sum was not liable under the guarantee as Wong had no actual authority to provide the guarantee.

Cik Jennifer Tay, for the respondent, argued that the doctrine of constructive notice should not extend to the register of particulars of directors in Form 49. On the authority of *Woodland Development, supra,* she submitted this doctrine applied only to a company's memorandum and articles of association. She stressed that it would be dangerous to stretch the doctrine to Form 49 as this is a document which concerns the "indoor management" of a company. On the authority of *Royal British Bank v. Turquand* [1856] 6 E & B 327, 119 ER 886 or sometimes called the rule in *Turquand's* case, Counsel submitted the first appellant was bound by the contract P7, since the respondent was entitled to assume that acts within the constitution of the company have been properly performed and that the necessary resolutions have been passed.

In dealing with the first ground of appeal, the question is whether the common law doctrine of constructive notice extends to Form 49. In company law, constructive notice means that anyone dealing with a registered company is deemed to have notice of the contents of its public documents. According to **Gower's Principles of Modern Company Law,** 5th Edn. 1992, p. 170:

> Precisely what that included was never wholly clear but it certainly included the memorandum and articles of association.

Here, there is no difficulty in deciding that Form 49 is a public document. Section 141(1) of the Act requires every company to keep in its registered office a register of its directors, managers and secretaries. The register shall contain the full names, addresses, other occupations and identifications, if any, of the directors, managers and secretaries. The company shall lodge with the Registrar within one month after incorporation a return containing the aforesaid

particulars. In addition, if there is any change, whether a person ceases to be, or becomes, a director, the company must lodge also within one month the prescribed return or notice with the Registrar (s. 141(6)(b)) whose certificate stating that from any return lodged it appears that a person was at any specified time a director, manager or secretary of a company is *prima facie* evidence of the facts stated in the certificate. Finally, this register is open to inspection by not only members of the company but also any other person.

However, the next important question is whether Form 49 comes within the category of public documents upon which persons dealing with the company is deemed to have notice of its contents. The learned author of **Charlesworth & Cain on Company Law,** supra, is of the view that the doctrine applies **presumably** to the list of directors because it is a public document which is open to public inspection at the Registry of Companies. On the other hand, the learned author of **Palmer's Company Law,** Vol. 1, 24th Edn., discussed the issue in more detail at para 21-02:

> It is sometimes not easy to determine which of the company's documents are public documents and which concern only its internal management. In principle only documents which are registered with the Registrar can be public documents, but, as we shall see, not all of them have this character.
>
> Obviously the memorandum and the articles are public documents. Special resolutions, if duly registered in accordance with s. 380, likewise become public documents. The same would appear to apply to other resolutions required to be registered under s. 380.
>
> It would further appear that charges on the undertaking of the company or on specific property belonging to it, if registered according to ss. 395 *et seq.*, are likewise public documents, but this applies only to the registered particulars and not to "special provisions contained in that charge restricting the company from dealing with their property in the usual manner when the subsisting charge is a floating security."
>
> Beyond this no guidance can be obtained from decided cases on what are public documents of registered companies. It is thought that not all documents which a company has to register fall within that category. A distinction has to be drawn between documents affecting the powers of the company and its agents and other documents. Only documents which fall into the former category are public documents, e.g. the other resolutions - other than special resolutions - requiring registration under s. 380 and particulars relating to the directors (see s. 288), but documents falling within the second category, such as balance sheets or entries in the register of directors' interests (see s. 325), are not, it is thought, "public documents" because their purpose is merely to provide information of the financial position of the company or the interest of its managers in the company.

The conclusion that follows from the above opinion, with which we respectfully agree, is that the common law doctrine of constructive notice should apply to Form 49. To reiterate, Form 49 is a public document which contains particulars of directors who are the mind and will of a company, as well as managers and secretaries who are responsible for the day-to-day running of the company. It is a document which affects the powers of the company and its agents. Certainly, its purpose must be more than just to provide information about the company's directors, manager and secretary. Therefore, persons dealing with the company should check with the Registrar of Companies who its directors, managers and secretaries are at any given time.

Cik Jennifer Tay has urged us to treat Form 49 as an "indoor management" document so that the respondent could take advantage of the rule in *Turquand's* case. This rule was stated by Lord Simonds in *Morris v. Kanssen* [1946] AC 459 at p. 474 as follows:

> But persons contracting with a company and dealing in good faith may assume that acts within its constitution and power have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular.

According to His Lordship (at p. 475):

> it is a rule designed for the protection of those who are entitled to assume, just because they cannot know, that the person with whom they deal has the authority which he claims. This is clearly shown by the fact that the rule cannot be invoked if the condition is no longer satisfied, that is, if he who would invoke it is put upon his inquiry. He cannot presume in his own favour that things are rightly done if inquiry that he ought to make would tell him that they were wrongly done.

Based on Lord Simond's dictum, we say with confidence that the rule in *Turquand's* case does not apply here. We hasten to add that as Form 49 (D14) is a public document to which the common law doctrine of constructive notice applies, the respondent, having been put upon inquiry of its contents, but having failed to check, must be presumed to have known that at the material time, James Kow Yuen Wah was not a director of the first appellant and was, therefore, not authorised to sign P7 on the company's behalf. Accordingly, as P7 was signed by an unauthorised person on behalf of the first appellant, the latter cannot be made liable under the hire purchase agreement P7.

With regard to the second ground of appeal, we would like to say, in passing, that the "concession" of learned Counsel for the respondent in the Court below (certainly not Cik Tay) that there was insufficient evidence against the first appellant merely goes to show a weakness in the respondent's case. In practice, it is still the duty of the trial Judge to examine and evaluate the entire evidence before he can come to a conclusion that the evidence led against a defendant is so unsatisfactory or unreliable for him to hold that the plaintiff has not proved his case. In the instant case, in our view, it must have been against the background of the evidence of PW1 and those of DW1, DW2 and DW3, however unsatisfactory it was, that led the trial Sessions Court Judge to her finding, thereby disregarding even the "concession" made by the respondent's Counsel. However, since we have made our primary finding on the first ground of appeal, it would not be necessary for the determination of this appeal for us to decide on the second ground.

For reasons which we have stated above, we allow this appeal with costs here and below and set aside the judgments of the Courts below. Lastly, we order that the deposit be refunded to the first appellant.

ROSLIM BIN HARUN

v.

PUBLIC PROSECUTOR

SUPREME COURT, IPOH
TUN DATO' SERI HAJI ABDUL HAMID BIN HAJI OMAR LP,
TAN SRI DATUK EDGAR JOSEPH JR. SCJ,
DATO' MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ
[CRIMINAL APPEAL NO. 05-38-93]
2 APRIL 1994

DANGEROUS DRUGS: Charge of trafficking in cannabis - Whether it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Dangerous Drugs Act 1952.

The accused was convicted of trafficking in 1.5 kilograms of cannabis in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act) and sentenced to death. On appeal the question that arose was whether it was proven beyond reasonable doubt that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act and in this regard Counsel for the appellant relied heavily on the case of *Leong Bon Huat v. Pendakwa Raya* [1993] 3 CLJ 603.

Held:

[1] Having read and re-read the evidence of the chemist in the present case with a critical eye, the Court was completely convinced that it did not suffer from any of the infirmities referred to in *Leong Bon Huat's* case. In the circumstances the Court had no hesitation in concluding that it was sufficiently proved that the subject matter of the charge was cannabis within the meaning of s. 2 of the Act.

[Appeal dismissed. Conviction and sentence of death passed against the appellant confirmed].

[**Bahasa Malaysia** Translation of Headnote]

DADAH BERBAHAYA: Tuduhan mengedar ganja - Sama ada terbukti sepenuhnya bahawa halperkara tuduhan tersebut adalah ganja dalam lingkungan takrif s. 2 Akta Dadah Berbahaya 1952.

Tertuduh disabitkan kesalahan mengedar 1.5 kilogram ganja yang melanggar s. 39B(1)(a)